



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0346; FRL-9927-55-Region 8]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to approve a May 11, 2012 State Implementation Plan (SIP) submission from the State of Colorado that is intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (Act or CAA) for the 2006 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). This submission addresses the requirement that Colorado's SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. EPA is proposing to determine that Colorado's existing SIP contains adequate provisions to ensure that air emissions in Colorado do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state, or interfere with another state's measures to prevent significant deterioration (PSD) of air quality or to protect visibility. EPA is also proposing to approve the portion of Colorado's submission that addresses the CAA requirement that SIPs contain adequate provisions related to interstate and international pollution abatement.

DATES: Comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0346, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: clark.adam@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2012-0346. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If

you send an e-mail comment directly to EPA, without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I, General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CAIR mean or refer to the Clean Air Interstate Rule.
- (iii) The initials CSAPR mean or refer to the Cross-State Air Pollution Rule or “Transport Rule.”
- (iv) The initials CDPHE mean or refer to the Colorado Department of Public Health and Environment.
- (v) The words State and Colorado mean the State of Colorado, unless the context indicates otherwise.
- (vi) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (vii) The initials NAAQS mean or refer to the National Ambient Air Quality Standards.
- (viii) The initials NNSR mean or refer to nonattainment New Source Review.
- (ix) The initials PM_{2.5} mean or refer to fine particulate matter.
- (x) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xi) The initials RAVI mean or refer to Reasonably Attributable Visibility Impairment.
- (xii) The initials SIP mean or refer to State Implementation Plan.
- (xiii) The initials TSD mean or refer to Technical Support Document.
- (xiv) The initials WRAP mean or refer to Western Regional Air Partnership.
- (xv) The initials µg/m³ mean or refer to micrograms per cubic meter.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the

comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. 2006 PM2.5 NAAQS and Interstate Transport

On September 21, 2006, EPA promulgated a final rule revising the 1997 24-hour primary

and secondary NAAQS for PM_{2.5} from 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 35 $\mu\text{g}/\text{m}^3$ (October 17, 2006, 71 FR 61144).

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the “implementation, maintenance, and enforcement” of such NAAQS. EPA refers to these specific submittals as “infrastructure” SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS. For the 2006 24-hour PM_{2.5} NAAQS, these infrastructure SIPs were due on September 21, 2009. CAA section 110(a)(2) includes a list of specific elements that “[e]ach such plan submission” must meet.

The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called “good neighbor” provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two elements under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (element 3) to prevent significant deterioration of air quality or (element 4) to protect visibility. In this action, EPA is addressing all four elements of CAA section 110(a)(2)(D)(i).

CAA section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). EPA is also addressing this requirement with regard to Colorado's SIP in this action.

B. Rules Addressing Interstate Transport for the 2006 PM_{2.5} NAAQS

EPA has previously addressed the requirements of CAA section 110(a)(2)(D)(i)(I) in past regulatory actions.¹ Most recently, EPA published the final Cross State Air Pollution Rule (CSAPR or "Transport Rule") to address CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States with respect to the 2006 PM_{2.5} NAAQS, the 1997 PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). CSAPR replaces the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.² See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating CSAPR, see *EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012), and ordering EPA to continue implementing CAIR in the interim. However, on April 29, 2014, the U.S. Supreme Court reversed and remanded the D.C. Circuit's ruling and upheld EPA's approach in CSAPR. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1610 (2014). After the U.S. Supreme Court decision, EPA filed a motion to lift the stay on CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years. On October 23, 2014 the D.C. Circuit granted EPA's motion and lifted the stay on CSAPR. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. CSAPR began

¹ See NO_x SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

² CAIR addressed the 1997 annual and 24-hour PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour PM_{2.5} NAAQS.

implementation on January 1, 2015 pursuant to the D.C. Circuit's directive lifting the stay. The State of Colorado was not covered by CSAPR, and EPA made no determinations in the rule regarding whether emissions from sources in Colorado significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state.

C. EPA Guidance

On September 25, 2009, EPA issued a guidance memorandum that provides recommendations to states for making submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 PM_{2.5} standards ("2006 PM_{2.5} NAAQS Infrastructure Guidance" or "Guidance").³ With respect to element 1 of CAA section 110(a)(2)(D)(i) to prohibit emissions that will contribute significantly to nonattainment of the NAAQS in any other state, the 2006 PM_{2.5} NAAQS Infrastructure Guidance advised states to include in their section 110(a)(2)(D)(i)(I) SIP submissions an adequate technical analysis to support their conclusions regarding interstate pollution transport, *e.g.*, information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.⁴

With respect to element 2 of CAA section 110(a)(2)(D)(i) to prohibit emissions that

³ See Memorandum from William T. Harnett entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," September 25, 2009, available at http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.

⁴ The 2006 PM_{2.5} NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the court in the *North Carolina* case and that would provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour PM_{2.5} NAAQS because the CAIR rule did not address this NAAQS. See 2006 PM_{2.5} NAAQS Infrastructure Guidance at 3.

would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent and distinct requirement of the statute and provide technical information appropriate to support the State's conclusions, and suggested consideration of the same technical information that would be appropriate for element 1 of this CAA requirement.

In this action, EPA is proposing to use the conceptual approach to evaluating interstate pollution transport under CAA section 110(a)(2)(D)(i)(I) that EPA explained in the 2006 PM_{2.5} NAAQS Infrastructure Guidance and CSAPR. As such, we find that the CAA section 110(a)(2)(D)(i)(I) SIP submission from Colorado may be evaluated using a "weight of evidence" approach that takes into account available relevant information, including the factors recommended in the 2006 PM_{2.5} NAAQS Infrastructure Guidance. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

With respect to the requirements in section 110(a)(2)(D)(i)(II) which address elements 3 (PSD) and 4 (visibility), EPA most recently issued an infrastructure guidance memo on September 13, 2013 that included guidance on these two elements.⁵ For the purposes of this action, this memo will hereon be referred to as the "2013 I-SIP Guidance."

III. Colorado's Submittal

On May 11, 2012, the Colorado Department of Public Health and Environment (CDPHE) submitted an interstate transport SIP which concluded that Colorado meets all of the

⁵ See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" dated September 13, 2013, in the docket for this action.

requirements of CAA section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5} NAAQS.⁶ In this submission, Colorado provided a thorough technical analysis for elements 1 and 2 of CAA section 110(a)(2)(D)(i) which concluded that the State did not contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other states. The State based this conclusion on consideration of factors including distance, monitored attainment of the 2006 24-hour PM_{2.5} NAAQS in Colorado and downwind states, and modeling conducted by EPA.

To meet the element 3 (PSD) requirement of CAA section 110(a)(2)(D)(i), the State referenced its existing PSD and nonattainment New Source Review (NNSR) permitting programs. To meet the element 4 (visibility) requirement of 110(a)(2)(D)(i), the State referenced and discussed its Reasonably Attributable Visibility Impairment (RAVI) program, Regional Haze SIP, and some emission reduction programs currently in the Colorado SIP that reduce visibility impairing pollutants.

The State's May 11, 2012 interstate transport submission and June 4, 2010 infrastructure SIP certification for the 2006 24-hour PM_{2.5} NAAQS both overlooked the requirements of CAA section 110(a)(2)(D)(ii), which requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). The State submitted a clarification letter on March 12, 2015, which explained that the State had inadvertently left discussion of 110(a)(2)(D)(ii) out of the 2006 24-hour PM_{2.5} infrastructure certification.⁷ The State noted that in its four subsequent infrastructure submittals (for the 2008 Pb, 2008 Ozone, 2010 NO₂ and 2010 SO₂ NAAQS), it had

⁶ Colorado's SIP, dated May 11, 2012, is included in the docket for this action.

⁷ Colorado's certification letter is available in the docket for this action.

included the necessary demonstration that Colorado's SIP meets the requirements of 110(a)(2)(D)(ii). The State requested that the same demonstration used in all subsequent infrastructure submittals be applied to the 2006 24-hour PM_{2.5} certification submitted June 4, 2010.⁸

IV. EPA's Evaluation

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA first determines whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in other states. If a state is determined not to have such contribution or interference, then section 110(a)(2)(D)(i)(I) does not require any changes to that state's SIP.

Consistent with the first step of EPA's approach in the 1998 NO_x SIP call, the 2005 CAIR, and the 2011 CSAPR, EPA evaluated impacts of emissions from Colorado with respect to specific monitors identified as having nonattainment and/or maintenance problems, which we refer to as "receptors." To evaluate these impacts, and in the absence of relevant modeling of Colorado emissions, EPA examined factors suggested by the 2006 Guidance such as monitoring data, topography, and meteorology. EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to nonattainment or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state.

Our proposed approval takes into account the information provided in Colorado's 2012 Interstate Transport SIP. In addition, we are supplementing the evaluation of the State's submittal with a review of the monitors in other states that are appropriate "nonattainment

⁸ Colorado's 2006 PM_{2.5}, 2008 Pb, 2008 Ozone, 2010 NO₂ and 2010 SO₂ infrastructure certifications are available in the docket for this action.

receptors” or “maintenance receptors,” consistent with EPA’s approach in the CSAPR, and additional relevant technical information to determine whether sources in Colorado contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other states.

Our Technical Support Document (TSD) contains a detailed evaluation and is available in the public docket for this rulemaking, which may be accessed online at www.regulations.gov, docket number EPA-R08-OAR-2012-0346. Below, we provide a summary of our analysis.

A. Identification of Nonattainment and Maintenance Receptors

EPA evaluated data from existing monitors over three overlapping 3-year periods (i.e., 2009-2011, 2010-2012, and 2011-2013) to determine which areas are expected to be violating the 2006 24-hour PM_{2.5} NAAQS and which areas might have difficulty maintaining attainment of the standard. If a monitoring site measured a violation of the 2006 24-hour PM_{2.5} NAAQS during the most recent 3-year period (2011-2013), then that monitor location was evaluated for purposes of the significant contribution to nonattainment (element 1) of section 110(a)(2)(D)(i). If, on the other hand, a monitoring site shows attainment of the 2006 24-hour PM_{2.5} NAAQS during the most recent 3-year period (2011-2013) but a violation in at least one of the previous two 3-year periods (2010-2012 or 2009-2011), then that monitor location was evaluated for purposes of the interfere with maintenance (element 2) of section 110(a)(2)(D)(i).

This approach is similar to that used in the modeling done during the development of CSAPR, but differs in that it relies on monitoring data (rather than modeling) for the western states not included in the CSAPR modeling domain.⁹ By this method, EPA has identified those

⁹ As noted, the State of Colorado was not included in the CSAPR modeling domain.

areas with monitors to be considered “nonattainment receptors” or “maintenance receptors” for evaluating whether the emissions from sources in another state could significantly contribute to nonattainment in, or interfere with maintenance in, that particular area.

EPA continues to believe that the more widespread and serious transport problems in the eastern United States are analytically distinct. For the 2006 24-hour $PM_{2.5}$ NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport. In CSAPR, EPA did not calculate the portion of any downwind state's predicted $PM_{2.5}$ concentrations that would result from emissions from individual western states, such as Colorado. Accordingly, EPA believes that section 110(a)(2)(D)(i)(I) SIP submissions for states outside the geographic area analyzed to develop CSAPR may be evaluated using a “weight of the evidence” approach that takes into account available relevant information, such as that recommended by EPA in the Guidance. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider as to whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

B. Evaluation of Significant Contribution to Nonattainment

EPA reviewed technical information to evaluate the potential for Colorado emissions to contribute significantly to nonattainment of the 2006 PM_{2.5} NAAQS at specified monitoring sites in the Western U.S.¹⁰ EPA first identified as “nonattainment receptors” all monitoring sites in the western states that had recorded PM_{2.5} design values above the level of the 2006 24-hour PM_{2.5} NAAQS (35 µg/m³) during the years 2011-2013.¹¹ See Section III of our TSD for more a more detailed description of EPA’s methodology for selection of nonattainment receptors.

Because geographic distance is a relevant factor in the assessment of potential pollution transport, EPA first reviewed information related to potential transport of PM_{2.5} pollution from Colorado to the nonattainment receptors in Utah, the only state bordering Colorado which contains such receptors. As detailed in our TSD, the following factors support a finding that emissions from Colorado do not significantly contribute to nonattainment of the 2006 24-hour PM_{2.5} NAAQS in Utah: (1) Technical information, such as data from monitors in the vicinity of these nonattainment receptors, related to the nature of local emissions; (2) topographical considerations such as intervening mountain ranges which tend to create physical impediments for pollution transport; and (3) meteorological considerations such as prevailing winds. While none of these factors by itself would necessarily show non-contribution, when taken together in a

¹⁰ EPA also considered potential PM_{2.5} transport from Colorado to the nearest nonattainment and maintenance receptors located in the eastern, midwestern and southern states covered by CSAPR and believes it is reasonable to conclude that, given the significant distance from Colorado to the nearest such receptor (in East St. Louis, IL) and the relatively insignificant amount of emissions from Colorado that could potentially be transported such a distance when compared to downwind states whose contribution was modeled for CSAPR, emissions from Colorado sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS at this location. These same factors also support a finding that emissions from Colorado sources neither contribute significantly to nonattainment nor interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS at any location further east. *See TSD at Section I.B.3.*

¹¹ Because CAIR did not cover states in the Western United States, these data are not significantly impacted by the remanded CAIR and thus could be considered in this analysis. In contrast, recent air quality data in the eastern, midwestern and southern states are significantly impacted by reductions associated with CAIR and because CSAPR was developed to replace CAIR, EPA could not consider reductions associated with the CAIR in the base case transport analysis for those states. *See 76 FR at 48223-24.*

weight-of-evidence assessment they are sufficient for EPA to determine that emissions from Colorado do not significantly contribute to nonattainment at the Utah receptors.

EPA also evaluated potential PM_{2.5} transport to nonattainment receptors in the more distant western states of Idaho, Montana, California and Oregon. The following factors support a finding that emissions from Colorado do not significantly contribute to nonattainment of the 2006 24-hour PM_{2.5} NAAQS in any of these states: (1) The significant distance from Colorado to the nonattainment receptors in these states; (2) technical information, such as data from nearby monitors, related to the nature of local emissions; and (3) the presence of intervening mountain ranges, which tend to impede pollution transport.

Based on our evaluation, we propose to conclude that emissions of direct PM_{2.5} and PM_{2.5} precursors from sources in the State of Colorado do not significantly contribute to nonattainment of the 2006 24-hour PM_{2.5} standards in any other state, that the existing SIP for the State of Colorado is adequate to satisfy the “significant contribution” requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} standards, and that the State of Colorado therefore does not need to adopt additional controls for purposes of implementing the “significant contribution to nonattainment” requirement of 110(a)(2)(D)(i)(I) with respect to that NAAQS at this time.

C. Evaluation of Interference with Maintenance

We also reviewed technical information to evaluate the potential for Colorado emissions to interfere with maintenance of the 2006 24-hour PM_{2.5} standards at specified monitoring sites in the Western U.S. EPA first identified as “maintenance receptors” all monitoring sites in the western states that had recorded PM_{2.5} design values above the level of the 2006 24-hour PM_{2.5} NAAQS (35 µg/m³) during the 2009-2011 and/or 2010-2012 periods but below this standard

during the 2011-2013 period. See section III of our TSD for more information regarding EPA's methodology for selection of maintenance receptors. All of the maintenance receptors in the western states are located in California, Utah and Montana. EPA therefore evaluated the potential for transport of Colorado emissions to the maintenance receptors located in these states. As detailed in our TSD, the following factors support a finding that emissions from Colorado do not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in those states: (1) Technical information, such as data from monitors near maintenance receptors, related to the nature of local emissions, and (2) the significant distance between Colorado and these maintenance receptors.

Based on this evaluation, EPA proposes to conclude that emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors from sources in the State of Colorado do not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ standards in any other state, that the existing SIP for the State of Colorado is adequate to satisfy the "interfere with maintenance" requirements of CAA section 110(a)(2)(D)(i)(I), and that the State of Colorado therefore does not need to adopt additional controls for purposes of implementing the "interfere with maintenance" requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS at this time.

D. Evaluation of Interference with Measures to Prevent Significant Deterioration

With regard to the PSD portion of section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rule(s).¹² On September 23, 2013, EPA approved CAA section

¹² See 2013 I-SIP Guidance.

110(a)(2) elements (C) and (J) for Colorado's infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS with respect to PSD requirements for all regulated pollutants (78 FR 58186). As discussed in detail in the proposed rulemaking for that final action, the concurrent approval of PSD-related revisions which incorporated the requirements of the 2008 PM_{2.5} NSR Implementation Rule and certain requirements of the 2010 PM_{2.5} Increment Rule to the Colorado SIP action ensured that Colorado's SIP-approved PSD program meets current structural requirements for all regulated NSR pollutants.¹³

As stated in the 2013 I-SIP Guidance, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy element 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Colorado has a SIP-approved nonattainment NSR program which ensures regulation of major sources and major modifications in nonattainment areas.¹⁴ As Colorado's SIP meets structural PSD requirements for all regulated NSR pollutants, and contains a fully approved nonattainment NSR program, EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of element 3 of section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5} NAAQS.

E. Evaluation of Interference with Measures to Protect Visibility

¹³ The proposed rulemaking was published May 23, 2013 (78 FR 30830). As described in that proposed rulemaking, EPA did not approve certain portions of the State's incorporation of the 2010 PM_{2.5} Increment Rule because these portions were ultimately removed from EPA's PSD regulations.

¹⁴ See Colorado Regulation No. 3, Part D, Section V, which was most recently approved by EPA in a final rulemaking dated February 13, 2014 (79 FR 8632).

To determine whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility protection is satisfied, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. PM_{2.5} is among the pollutants which could interfere with visibility protection.¹⁵ An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).¹⁶

Colorado submitted a regional haze SIP to EPA on May 25, 2011. EPA approved Colorado's regional haze SIP on December 31, 2012 (77 FR 76871). In early 2013, WildEarth Guardians and the National Parks Conservation Association (NPCA) filed separate petitions for reconsideration of certain aspects of EPA's approval of the Colorado's regional haze SIP.¹⁷ After these petitions were filed, a settlement agreement was entered into concerning the Craig Generating Station by the petitioners, EPA, CDPHE, and Tri-State Generation and Transmission Association, Inc., and filed with the court on July 10, 2014.¹⁸ In accordance with the settlement agreement, EPA requested and the court granted a voluntary remand to EPA of the portions of EPA's December 2012 regional haze SIP approval that related to Craig Unit 1. Because of this

¹⁵ Section II.A.3 of Appendix Y to Part 51 – Guidelines for BART Determinations Under the Regional Haze Rule and 40 CFR 51.166(b)(i)(b).

¹⁶ See 2013 I-SIP Guidance. EPA also approved the visibility requirement of 110(a)(2)(D)(i)(II) in a final rulemaking published April 20, 2011 (76 FR 22036) by a demonstration provided by the State that did not rely on the Colorado Regional Haze SIP.

¹⁷ WildEarth Guardians filed its petition on February 25, 2013, and NPCA filed its petition on March 1, 2013.

¹⁸ This settlement agreement is included in the docket for this action; *see also*. Proposed Settlement Agreement, 79 FR 47636 (Aug. 14, 2014).

remand, and because the additional controls at the Craig facility will be implemented through a revision to the Colorado regional haze SIP that EPA has not yet acted on, EPA cannot rely on this approval as automatically satisfying element 4.

EPA does, however, consider aspects of our approval of Colorado's regional haze SIP to be sufficient to satisfy this requirement. Specifically, EPA found that Colorado met its 40 CFR 51.308(d)(3)(ii) requirements to include in its regional haze SIP all measures necessary to: (1) Obtain its share of the emission reductions needed to meet the reasonable progress goals for any other state's Class I area to which Colorado causes or contributes to visibility impairment; and (2) ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through a regional planning process. Colorado participated in a regional planning process with Western Regional Air Partnership (WRAP). In the regional planning process, Colorado analyzed the WRAP modeling and determined that emissions from the State do not significantly impact other states' class I areas.¹⁹ Colorado accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP, and the SIP included the controls assumed in the modeling. For these reasons, EPA determined that Colorado had satisfied the Regional Haze Rule requirements for consultation and had included controls in the SIP sufficient to address the relevant requirements related to impacts on Class I areas in other states. Therefore, we are proposing to approve the Colorado SIP as meeting the requirements of element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2006 24-hour PM_{2.5} NAAQS.

F. Evaluation of CAA Section 110(a)(2)(D)(ii) Requirements

¹⁹ See our proposed rulemaking on the Colorado regional haze SIP, 77 FR 18052, March 26, 2012.

As stated above, Colorado's May 11, 2012 interstate transport submission and June 4, 2010 infrastructure SIP certification for the 2006 24-hour PM_{2.5} NAAQS both overlooked the requirements of CAA section 110(a)(2)(D)(ii). The State submitted a clarification letter on March 12, 2015, which explained that the State had inadvertently left discussion of 110(a)(2)(D)(ii) out of the 2006 24-hour PM_{2.5} infrastructure certification, and referenced the four subsequent infrastructure submittals (for the 2008 Pb, 2008 Ozone, 2010 NO₂ and 2010 SO₂ NAAQS) that included a demonstration that Colorado's SIP meets the requirements of 110(a)(2)(D)(ii). The State requested that the same demonstration used in all subsequent infrastructure submittals be applied to the 2006 24-hour PM_{2.5} certification submitted June 4, 2010.

CAA section 110(a)(2)(D)(ii) requires that each SIP contain adequate provisions ensuring compliance with applicable requirements of CAA sections 126 and 115. Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Colorado's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.²⁰ This suffices to meet the notice requirement of section 126(a).

Colorado has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements

²⁰ See Colorado Regulation 3, Part D. IV.A.1.

of CAA section 110(a)(2)(D)(ii) for the 2006 PM_{2.5} NAAQS. Therefore, we are proposing to approve the Colorado SIP as meeting the requirements of element 4 of CAA section 110(a)(2)(D)(ii) for the 2006 24-hour PM_{2.5} NAAQS.

V. Proposed Action

EPA is proposing to approve all four interstate transport elements of CAA Section 110(a)(2)(D)(i) from Colorado's May 11, 2012 submission. This proposed approval is based on EPA's finding that emissions from Colorado do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state and that the existing Colorado SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.

EPA is proposing to approve the 110(a)(2)(D)(ii) portion of Colorado's submission, based on our finding that the State's existing SIP is adequate to meet the requirements of this element for the 2006 24-hour PM_{2.5} NAAQS.

VI. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 29, 2015.

Shaun L. McGrath,
Regional Administrator,
Region 8.

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